

REMARKS

I. Summary of the Office Action Mailed March 17, 2009

In the Office Action mailed March 17, 2009 (the "Office Action"), the Examiner stated that the Vallino Affidavit filed on November 13, 2008 under 37 C.F.R. § 1.131 was ineffective to overcome the 103(a) rejection based on Shesol in view of Grabenkort.

In addition, the Examiner rejected claim 1 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Examiner also rejected claims 36 and 37 under 35 U.S.C. § 112, second paragraph, as being indefinite and failing to particularly point out and distinctly claim the subject matter of the invention.

Further, the Examiner rejected claims 1, 34, and 38-39 on the ground of non-statutory obviousness-type double patenting as allegedly being unpatentable over claims 1-5 of U.S. Patent No. 6,526,981.

In addition, the Examiner rejected claim 1 under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,257,240 ("Shesol") in view of U.S. Patent No. 4,237,010 listing Grabenkort *et al.* as inventors. Applicant notes that U.S. Patent No. 4,237,010 lists Zimmerly as the sole inventor (not Grabenkort), and appears to be directed to unrelated technology. However, U.S. Patent No. 5,238,010 lists Grabenkort *et al.* as inventors and is listed by the Examiner in the "Notice of References Cited," mailed on November 27, 2007. Accordingly, Applicant has proceeded herein as though the Examiner intended to cite U.S. Patent No. 5,238,010 ("Grabenkort").

The Examiner rejected the remaining claims under 35 U.S.C. § 103(a) as allegedly being unpatentable over Shesol and Grabenkort in view of various other references: claims 31-33 in view of U.S. Patent No. 6,142,966 ("Hely"); claims 34-35 in view of Bierman; claims 36-37 in view of U.S. Patent No. 5,807,300 ("Nix"); and claims 38-39 in view of U.S. Patent No. 6,132,399 ("Shultz").

II. Status of the Claims

Claims 1-60 are currently pending, with claims 2-30 and 40-60 having been previously withdrawn from consideration. Claims 1 and 31-39 are currently pending and stand rejected. No claims have been amended by way of this response.

III. Response to Rejections Under 35 U.S.C. § 112

The Examiner rejected claim 1 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Specifically, the Examiner stated that the “fabric connector being connected to the member flange such that it does not traverse the sidewall has not been sufficiently disclosed.” (May 14, 2008 Office Action at Page 3). Applicant respectfully disagrees with this rejection.

The Examiner stated that Applicant elected Figure 19, and Figure 19 shows “the fabric connector attached to the hollow member from a perspective of underneath.” (*Id.*). Therefore, the Examiner explained that one would not be able to determine whether the fabric connector traverses the sidewall. (*Id.*). However, paragraph 0062 of the present Application specifically states that “**FIG. 19 is a top plan view** of an embodiment of a site guard.” (See Application at ¶ 62 and copy thereof included below) (Emphasis added).

the site guard shown in **FIG. 18a**.

[0062] FIG. 19 is a top plan view of an embodiment of the site guard.

[0063] FIG. 20 is a top plan view of the extender for the

Thus, Figure 19 illustrates that the fabric connector does not traverse the sidewall. Accordingly, Applicant respectfully requests that this rejection be withdrawn.

The Examiner also rejected claims 36 and 37 under 35 U.S.C. § 112, second paragraph, as being indefinite and failing to particularly point out and distinctly claim the subject matter of the invention. Once again, Applicant must respectfully disagree. Based on the Application, the “scope of the claim[s] is clear to a hypothetical person possessing the ordinary level of skill in the pertinent art.” (M.P.E.P. § 2171). For example, based on Figure 19 and Paragraph 119, one of ordinary level of skill in the art would understand that claims 36 and 37 “particularly point out and distinctly define the metes and bounds of the subject matter that will be protected by the patent grant.” (*Id.*). Therefore, Applicant respectfully requests that this rejection be withdrawn.

IV. Response to the Double Patenting Rejection

Applicant notes that claims 1, 34, and 38-39 stand provisionally rejected as being allegedly unpatentable for non-statutory obviousness-type double patenting over claims 1-5 of

U.S. Patent No. 6,526,981. Applicant respectfully submits that upon allowance of the pending claims, Applicant will submit a terminal disclaimer in compliance with 37 C.F.R. § 1.321(c).

V. Response to the Rejections Under 35 U.S.C. § 103(a)

As stated above, the Examiner rejected claim 1 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Shesol in view of Grabenkort. The effective filing date of Shesol is June 5, 2000. Applicant had previously submitted a Declaration of Lisa M. Vallino under 37 C.F.R. § 1.131 with the previous office action response filed on November 13, 2008. The Examiner stated that the evidence submitted was insufficient to establish a conception of the invention prior to the effective date, 6/5/2008, of the Shesol reference. Accordingly, Applicant submits herewith a supplemented Declaration of Lisa M. Vallino under 37 C.F.R. § 1.131 that contains sufficient evidence to establish that, prior to the effective filing date of Shesol, the Applicant had conceived and reduced to practice the disclosure of independent claim 1 as follows:

1. A site guard, comprising:
 - (a) a hollow member having a U-shaped base, the base having an edge to be positioned upon a patient adjacent a site, the base having a width sufficient to straddle the site and a length and a height sufficient to cover the site, the base joined to a sidewall to form a cover;
 - (b) a member flange attached to the lower edge of the hollow member;
 - (c) at least one fabric connector affixed to the member flange such that it does not traverse the sidewall;
 - (d) means for affixing the hollow member to the at least one fabric connector; and
 - (e) means for closing the fabric connector on the patient.

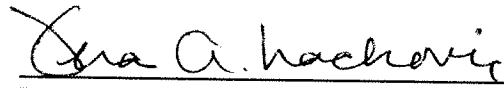
Thus, Shesol is not prior art to the present Application.

Moreover, Grabenkort does not teach or disclose the present invention as it does not teach “a hollow member” with “at least one fabric connector.” (May 14, 2008 Office Action at Page 5). Consequently, Applicant respectfully requests that this rejection be withdrawn and submits that independent claim 1 and claims 31-39, which depend therefrom, are patentable.

VI. Conclusion

For at least the foregoing reasons, Applicant submits that all pending claims are in condition for allowance and respectfully request notice to that effect. Should the Examiner wish to discuss the case with the undersigned, the Examiner is invited to call the undersigned at 312-701-8115.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Vera A. Nackovic", written over a horizontal line.

Vera A. Nackovic
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